

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS**

DAVID A. STEBBINS

PLAINTIFF

v.

NO. 3:17-CV-03092-TLB

**STATE OF ARKANSAS, ARKANSAS
REHABILITATION SERVICES, AND
AMY JONES**

DEFENDANT

**RESPONSE IN OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL DISCOVERY (D.E. 102)**

Come now the Defendants, the State of Arkansas, Arkansas Rehabilitation Services ("ARS"), and Amy Jones, by and through their attorneys, Attorney General Leslie Rutledge and Senior Assistant Attorney General Christine A. Cryer, and for their Response in Opposition to Plaintiff's Motion to Compel (DE 102), state as follows:

1. Plaintiff's motion should be denied for a several reasons.
2. Fed.R.Civ.Pro. 37(a)(1) requires Plaintiff to include a certification in his motion, attesting that he has in good faith conferred or attempted to confer with the undersigned regarding the documents he is seeking. "Good faith" being the operative phrase.
3. Plaintiff's only effort to attempt to resolve this matter prior to the filing of his motion was to send the undersigned an email on Friday, October 27, 2017 at 1:42 p.m. in which he afforded "24 hours to send me an email saying that you are sending your revised discovery responses in the mail. Consider this to be

my one and only attempt to resolve the discovery dispute without court action.”
(See attached – **Exhibit A**)

4. Plaintiff has not attempted in good faith to resolve this issue. For this reason alone, Plaintiff’s motion should be denied.

5. Regardless of whether or not Plaintiff has adhered to Rule 37 (which he has not) Plaintiff’s motion should nevertheless be denied.

6. In his motion, Plaintiff states that he believes the Defendants falsified his ARS file to reflect all entries into his file were made in December 2015, when, in fact, according to Plaintiff, they were actually made in 2017. Plaintiff has absolutely zero evidence of this allegation, and the Defendants vehemently deny the accusations.

7. On September 21, 2017, the Defendants produced five sets of discovery responses to Plaintiff. (See attached cover letter & discovery responses at issue – **Exhibit B**) Included in the responses were Defendants’ Answers to Plaintiff’s Fourth Set of Interrogatories and Requests for Production. In response to Request for Production No. 2, Defendants objected to producing computer versions of the documents already produced. The basis for their objection was that the request was burdensome and irrelevant. Defendants correctly and properly objected to producing documents previously produced – just in a different format.

8. Plaintiff offers no valid reason as to why he needs these records produced again – other than he now believes the Defendants falsified these records to pain him in a negative light. Defendants deny the allegations and object to

Plaintiff's insinuation that they have been less than truthful in producing valid documentation.

9. The documents have not been altered or backdated in any way. (See attached – **Exhibit C** – Declaration of Amy Jones)

10. Further, Plaintiff has used a good number of these documents in support of his Second Motion for Summary Judgment, Brief in Support, and Statement of Undisputed Material Facts which were filed on September 28, 2017. (DE 79 – 81; see specifically DE 79, pp. 17 – 26; 79 - 90)

11. If Plaintiff now wishes to assert a claim that the documents he attached to his own motion were falsified and cannot be relied on, it would seem to invalidate his Second Motion for Summary Judgment altogether.

12. Plaintiff's Motion to Compel should be denied in its entirety.

WHEREFORE, Defendants respectfully request this Court deny Plaintiff's motion, and for any and all other just and proper relief to which they may be granted.

Respectfully submitted,

Leslie Rutledge
Attorney General

By: /s/ Christine A. Cryer
Christine A. Cryer
Arkansas Bar No. 2001082
Sr. Assistant Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Telephone: (501) 683-0958
Facsimile: (501) 682-2591
Christine.cryer@arkansasag.gov

CERTIFICATE OF SERVICE

I, Christine A. Cryer, Senior Assistant Attorney General, do hereby certify that on November 16, 2017, I electronically filed the forgoing with the Clerk of the Court using the CM/ECF system.

I, Christine A. Cryer, hereby certify that on November 16, 2017, I mailed the document by U.S. Postal Service to the following non CM/ECF participant:

Mr. David Stebbins
123 W. Ridge St., Apt. D
Harrison, Arkansas 72601

/s/ Christine A. Cryer